



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

July 5, 1993

Mr. Richard D. Monroe  
Associate General Counsel  
Texas Department of Transportation  
125 East 11th Street  
Austin, Texas 78701-2483

OR93-416

Dear Mr. Monroe:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 19763.

The Texas Department of Transportation (the "department") received an open records request for copies of

all documents by and between the [department] and the City of Angus regarding the state inspection conducted at [a specified railroad crossing] in regards to the 1987 Federal Railroad Signal Program, as well as all documents relating to the need for and placement of the crossing signals at that location.

You contend that this information comes under the protection of section 3(a)(1) of the Open Records Act, which protects "information deemed confidential by law, either Constitutional, statutory, or by judicial decision."

You inform this office that the requested records were created in the course of inspections of the railroad crossing pursuant to 23 U.S.C. § 130 and that 23 U.S.C. § 409 provides that records of such inspections "shall not be subject to discovery or admitted into evidence in a Federal or State court proceeding or considered for other purposes in any action for damages." You contend that to release the requested documents under the Open Records Act "would defeat the purpose of federal law . . . ."

In Open Records Decision No. 575 (1990) at 2, this office held that "we do not consider discovery privileges to be covered under section 3(a)(1) of the act." For

"privileged" information to be excepted from required public disclosure under the Open Records Act the information must otherwise come within one of the act's other exceptions to public disclosure, *e.g.*, section 3(a)(3) or 3(a)(7). *Id.* Hence, the mere fact that the records may be privileged from discovery has no bearing on whether they are excepted from disclosure under the Open Records Act.<sup>1</sup>

You have raised none of the act's other exceptions to required public disclosure with regard to the requested information. Accordingly, the department must release these records. Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact our office.

Yours very truly,



Loretta R. DeHay  
Assistant Attorney General  
Opinion Committee

LRD/RWP/jmn

Ref.: ID# 19763

cc: Mr. Raymond A. Williams, III  
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<sup>1</sup>We further note that at least one federal court of appeals has acknowledged without rebuke the public release of this type of information. *See Robertson v. Union Pac. R.R.*, 954 F.2d 1433 (8th Cir. 1992).